

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIAN SPILSBURY, an individual and as)
trustee of THE BRIAN E. SPILSBURY)
TRUST; DEE ANN SPILSBURY, an)
individual; KEVIN SPILSBURY, an)
individual and as trustee of THE KEVIN J.)
SPILSBURY TRUST; ANTHONETTE)
SPILSBURY, an individual; JOINT FORCES,)
LLC, a Nevada limited liability company;)
PREMIER MECHANICAL, LLC, a Nevada)
limited liability company; CREST RIDGE,)
LLC; a Nevada limited liability company; R.)
GLENN WOODS, as trustee of THE KEVIN)
J. SPILSBURY 2000 TRUST and THE)
BRIAN E. SPILSBURY 2000 TRUST,)

Plaintiffs,

vs.

U.S. SPECIALTY INSURANCE COMPANY, a)
Texas corporation; AMERICAN)
CONTRACTORS INDEMNITY COMPANY, a)
California corporation; HCC SURETY GROUP, a)
Texas corporation; TEXAS BONDING)
COMPANY, a Texas corporation; UNITED)
STATES SURETY COMPANY, a Maryland)
corporation; MTC FINANCIAL, INC., d/b/a)
TRUSTEE CORPS, a California corporation;)
DOES I through X, inclusive; and ROE ENTITIES)
I through X, inclusive,)

Defendants.

Case No.: 2:14-cv-00820-GMN-GWF

ORDER

Pending before the Court is a Motion to Dismiss (ECF No. 19) and a Motion to Strike Unrelated Plaintiffs (ECF No. 20) filed by Defendants U.S. Specialty Insurance Company (“USSIC”) and American Contractors Indemnity Company (“ACIC”) (collectively, “the Surety Defendants”). Both motions are fully briefed.

1 **I. BACKGROUND**

2 This case arises out of foreclosure proceedings based upon underlying general indemnity
3 agreements executed between Plaintiffs Premier Mechanical, LLC (“Premier”), Joint Forces,
4 LLC (“Joint Forces”), Brian Spilsbury, Dee Ann Spilsbury, Kevin Spilsbury, Anthonette
5 Spilsbury, Crest Ridge, LLC, R. Glen Woods, as trustee of the Brian E. Spilsbury Trust 2000
6 and Kevin J. Spilsbury Trust 2000, the Brian E. Spilsbury Trust 2000, and the Kevin J.
7 Spilsbury Trust 2000 (collectively, “Plaintiffs”), and Defendants U.S. Specialty Insurance
8 Company, American Contractors Indemnity Company, Texas Bonding Company, United States
9 Surety Company, and HCC Surety Group (collectively, “Defendants”).

10 Plaintiff Brian E. Spilsbury Trust 2000 owns the real property located at 2868 Anaheim
11 Avenue, Henderson, Nevada 89074 (the “Anaheim Property”). (Am. Compl. ¶ 7, ECF No. 9-1).
12 Plaintiffs Brian and Dee Ann Spilsbury reside at the Anaheim Property. (*Id.* ¶ 16).
13 Additionally, Plaintiff Kevin J. Spilsbury Trust 2000 owns the real property located at 244
14 Bethwick Circle, Las Vegas, Nevada 89120 (the “Bethwick Property”). (*Id.* ¶ 8). Plaintiffs
15 Kevin and Anthonette reside at the Bethwick Property. (*Id.* ¶ 16).

16 Plaintiffs allege that Defendants, as sureties, issued Performance and Labor and Material
17 Bonds (the “Bonds”) to Premier and Joint Forces for two construction projects. (*Id.* ¶ 17).
18 Plaintiffs also executed general indemnity agreements (“GIAs”) for each construction project.
19 (*Id.*). The GIAs provided Defendants “with a general power of attorney, not coupled with an
20 interest, in the event of a default of the Bonds.” (*Id.* ¶ 18). Plaintiffs further allege that, during
21 the course of performance, “Premier and Joint Forces were wrongfully terminated by the
22 respective general contractors for the Construction Projects.” (*Id.* ¶ 20). Additionally, Plaintiffs
23 allege that “[a]t the time of their terminations, [] Premier and Joint Forces were owed, and are
24 still owed, substantial sums of money by the respective General Contractors,” for work
25 performed for the construction projects. (*Id.* ¶ 23).

Moreover, Plaintiffs allege that after the terminations, the general contractors submitted extensive claims against the Bonds, and Defendants remitted “sizeable payments to the General Contractors.” (*Id.* ¶ 24). On June 27, 2011, Plaintiffs’ then-counsel notified Defendants that the power of attorney provided in the GIAs was revoked. (*Id.* ¶ 25). Additionally, on July 7, 2011, to secure the obligations against Plaintiffs for payments made pursuant to the Bonds, Defendants self-executed deeds of trusts against the Anaheim Property and the Bethwick Property (collectively, the “Deeds of Trust”). (*Id.* ¶ 26).

Subsequently, Defendants initiated an action in this District (the “First Federal Court Action”), seeking to enforce various terms of the GIAs and seeking judicial foreclosure of the self-executed Deeds of Trust. (*Id.* ¶ 28). Plaintiffs filed a motion to dismiss in the First Federal Court Action. (*Id.* ¶ 31). As a result, Plaintiffs further allege that Defendants conceded to Plaintiffs’ legal arguments in their motion to dismiss and “agreed to file an amended complaint that would remove the causes of action seeking to judicially foreclose against the Properties, and Defendants agreed to release and reconvey to Plaintiffs the Deeds of Trust against the Properties.” (*Id.*). Plaintiffs filed counterclaims against Defendants after Defendants allegedly “reneged upon their agreement and failed and/or refused to reconvey the Deeds of Trust.” (*Id.* ¶¶ 32–33). Plaintiffs’ counterclaims against Defendants included slander of title, declaratory relief, preliminary injunction, and violations of NRS 107.077. (*Id.* ¶ 33). Plaintiffs eventually stipulated to dismiss the First Federal Court Action. (*Id.* ¶ 36).

Following the stipulated dismissal, Defendants initiated non-judicial foreclosure proceedings against the Anaheim Property. (*Id.* ¶ 37). Shortly thereafter, on May 7, 2014, Plaintiffs filed the instant action in the Eighth Judicial District Court for the State of Nevada, alleging the following claims: (1) slander of title based on the Anaheim and Bethwick Properties; (2) declaratory relief based on the Anaheim and Bethwick Properties; (3) preliminary injunction based on the Anaheim and Bethwick Properties; (4) violations of NRS

1 107.077 based on the Anaheim and Bethwick Properties; and (5) violation of NRS 107.080
2 based on the Anaheim Property. (Compl. ¶¶ 40–116, ECF No. 1-1). Defendants properly
3 removed the case to this Court (Pet. For Removal, ECF No. 1), and Plaintiffs filed an Amended
4 Complaint on May 19, 2014 (Am. Compl., ECF No. 9-1).

5 **II. LEGAL STANDARD**

6 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a
7 cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l*
8 *v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to
9 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the
10 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds
11 on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering
12 whether the complaint is sufficient to state a claim, the Court will take all material allegations
13 as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v.*
14 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

15 The Court, however, is not required to accept as true allegations that are merely
16 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
17 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
18 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
19 violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
20 *Twombly*, 550 U.S. at 555) (emphasis added).

21 In order to survive a motion to dismiss, a complaint must allege “sufficient factual
22 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
23 556 U.S. 662, 678 (2009) (internal quotation marks omitted). “A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
25 that the defendant is liable for the misconduct alleged.” *Id.*

If the court grants a motion to dismiss for failure to state a claim, leave to amend should

1 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
 2 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant
 3 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in
 4 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the
 5 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
 6 prejudice to the opposing party by virtue of allowance of the amendment, futility of the
 7 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

8 **III. DISCUSSION**

9 **A. Motion to Dismiss**

10 As a preliminary matter, both parties agree that Plaintiffs’ third and eighth claims for
 11 preliminary injunction are moot. (Mot. to Dismiss 2:6–7, ECF No. 19; Response n.8, ECF No.
 12 30). Accordingly, the Court dismisses both claims with prejudice.

13 **1. Statute of Limitations**

14 Next, the Surety Defendants assert that Plaintiffs’ first and sixth claims for slander of
 15 title and Plaintiffs’ fourth and ninth claims for violations of NRS 107.077 are barred by the
 16 Nevada statutes of limitations. (Mot. to Dismiss 2:4–5, 2:11–13). “It is well-settled that in
 17 diversity cases federal courts must apply the choice-of-law rules of the forum state.” *Ledesma*
 18 *v. Jack Stewart Produce, Inc.*, 816 F.2d 482, 484 (9th Cir. 1987). The relevant choice-of-law
 19 rule, as established by the Nevada Supreme Court, is the rule of *lex fori*: i.e., that “the Statute of
 20 Limitations of the forum [will] govern the remedy....” *Wilcox v. Williams*, 5 Nev. 206, 1869
 21 WL 2402, at *4 (1869); accord *Sierra Diesel Injection Serv. v. Burroughs Corp.*, 648 F.Supp.
 22 1148, 1152 (D. Nev. 1986) (“[T]he local law of the forum governs whether an action is barred
 23 by the statute of limitations.”). Accordingly, the Court will apply the Nevada statutes of
 24 limitations to the claims in this action. Neither party disputes that Nevada’s statute of
 25 limitations for Plaintiffs’ claims for slander of title and violations of NRS 107.077 is two years.

1 (See Mot. to Dismiss 3:8–9, 4:3–5; *see also* Response 12:21, 21:13–22).

2 However, Plaintiffs assert that its claims survive dismissal under Nevada law based on
3 the doctrines of equitable tolling and equitable estoppel. (Response 12:18–19). More
4 specifically, Plaintiffs assert that equitable tolling applies because:

5 Plaintiffs timely brought their slander of title causes of action in the
6 First Federal Court Action. Defendants had notice of the slander of
7 title causes of action and actually conducted discovery based
8 thereon. Defendants voluntarily dismissed their non-judicial
9 foreclosure actions. Plaintiffs' current claims relative to the Deeds of
10 Trust, to the extent they are untimely, are not untimely due to
11 Plaintiffs' failure to exercise diligence, but rather the unique
12 circumstances of this matter, including Defendants promises to
reconvey title. When it was apparent that Defendants were once
again pursuing a course of action they abandoned in the First Federal
Action, i.e., foreclosure, Plaintiffs immediately brought the present
matter. Thus, equity requires that the statute of limitations be tolled.

13 (*Id.* 15:27–16:8). Additionally, Plaintiffs assert that equitable estoppel applies because
14 Plaintiffs relied on Defendants' representations that the Deeds of Trust would be reconveyed
15 when they agreed to dismiss the First Federal Court Action. (*Id.* 17:13–19). On the other hand,
16 Defendants assert that the doctrines of equitable tolling and equitable estoppel do not apply
17 because Plaintiffs were not diligent in pursuing their claims, Plaintiffs had knowledge of the
18 underlying facts of their claims before the limitations period expired, Plaintiffs waited long
19 after Defendants' representations of reconveyance before dismissing the First Federal Court
20 Action, and Defendants would be prejudiced by the application of the doctrines. (Reply 12:3–
21 15:16, ECF No. 33).

22 Nevada permits the use of equitable tolling “in situations where the danger of prejudice
23 to the defendant is absent, and the interests of justice so require.” *Seino v. Employers Ins. Co. of*
24 *Nev.*, 111 P.3d 1107, 1112 (Nev. 2005) (alteration and quotation omitted). Nevada considers
25 the following factors to determine whether equitable tolling is appropriate: the plaintiff's

1 diligence; the plaintiff's knowledge of the relevant facts; the plaintiff's reliance on authoritative
2 statements that misled the plaintiff about the nature of his rights; any deception or false
3 assurances by the defendant; the prejudice to the defendant that actually would result; and "any
4 other equitable considerations appropriate in the particular case." *Id.*

5 Equitable estoppel focuses on the defendant's affirmative actions that prevent a plaintiff
6 from filing a suit. *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000) (citing *Naton*
7 *v. Bank of California*, 649 F.2d 691, 696 (9th Cir. 1981)). To determine whether equitable
8 estoppel applies, courts consider several factors, such as whether the plaintiff actually relied on
9 the defendant's representations, whether such reliance was reasonable, whether there is
10 evidence that the defendant's purpose was improper, whether the defendant had actual or
11 constructive knowledge that its conduct was deceptive, and whether the purposes of the statute
12 of limitations have been satisfied. *Naton*, 649 F.2d at 696 (citations omitted).

13 The Ninth Circuit has held that determination of the applicability of equitable tolling is
14 generally not amenable to resolution on a Rule 12(b)(6) motion because its determination
15 "necessitates resort to the specific circumstances of the prior claim: parties involved, issues
16 raised, evidence considered, and discovery conducted." *Cervantes v. City of San Diego*, 5 F.3d
17 1273, 1276 (9th Cir. 1993). When a motion to dismiss is brought on the ground that the
18 plaintiff's complaint is untimely, "a complaint cannot be dismissed unless it appears beyond a
19 doubt that the plaintiff can prove no set of facts that would establish the timeliness of the
20 claim." *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995). "The sole
21 issue is whether the complaint, liberally construed in light of our 'notice pleading' system,
22 adequately alleges facts showing the *potential* applicability of the equitable tolling doctrine."
23 *Cervantes*, 5 F.3d at 1277.

24 Here, the Court finds that Plaintiffs have alleged facts sufficient to show the potential
25 applicability of the equitable tolling and equitable estoppel doctrines. Plaintiffs allege that they

1 previously brought their present claims in the First Federal Court Action. (Am. Compl. ¶ 33).
 2 Moreover, Plaintiffs allege that they relied on the representations of Defendants to reconvey the
 3 Deeds of Trust for the Anaheim and Bethwick properties, and “Defendants reneged upon their
 4 agreement and failed and/or refused to reconvey the Deeds of Trust.” (*Id.* ¶ 32). Furthermore,
 5 Plaintiffs allege that “Defendants continue to improperly and unlawfully encumber the
 6 Properties despite Plaintiffs’ repeated demands upon Defendants to reconvey the Deeds of
 7 Trust.” (*Id.*). Based on these allegations, Plaintiffs have alleged facts sufficient to show the
 8 potential applicability of the equitable tolling doctrine. Accordingly, the Court denies the
 9 Surety Defendant’s Motion to Dismiss on the grounds that Plaintiffs’ claims violated the statute
 10 of limitations.

11 **2. Sufficiency of Pleadings**

12 The Surety Defendants assert that Plaintiffs have failed to allege required facts to
 13 support their claims under NRS 107.077. NRS 107.077(1) provides as follows:

14 Within 21 calendar days after receiving written notice that a debt
 15 secured by a deed of trust made on or after October 1, 1991, has
 16 been paid or otherwise satisfied or discharged, the beneficiary shall
 17 deliver to the trustee or the trustor the original note and deed of trust,
 18 if the beneficiary is in possession of those documents, and a properly
 19 executed request to reconvey the estate in real property conveyed to
 20 the trustee by the grantor. If the beneficiary delivers the original note
 and deed of trust to the trustee or the trustee has those documents in
 his or her possession, the trustee shall deliver those documents to the
 grantor.

21 Accordingly, to support a claim under NRS 107.077, a plaintiff must allege that it provided
 22 “written notice that a debt secured by a deed of trust made on or after October 1, 1991, has been
 23 paid or otherwise satisfied or discharged.” However, Plaintiffs do not allege in their Amended
 24 Complaint that written notice was provided to the beneficiary of the Deeds of Trust. Thus, the
 25 Court grants the Surety Defendant’s Motion to Dismiss as to these claims.

1 Although the Court dismisses Plaintiffs' claims for violations of NRS 107.077, the Court
 2 finds that Plaintiffs may be able to plead additional facts to support these claims. Accordingly,
 3 because the Court finds that Plaintiff may be able to plead additional facts to support these
 4 causes of action, the Court will grant Plaintiff leave to file a second amended complaint.
 5 Plaintiff shall file its second amended complaint within twenty (20) days of the date of this
 6 Order, if it can allege sufficient facts that plausibly establish violations of NRS 107.077.
 7 Failure to file a second amended complaint by this date shall result in the Court dismissing
 8 these claims with prejudice.

9 **B. Motion to Strike Unrelated Plaintiffs**

10 The Surety Defendants move to strike the following as plaintiffs: Brian E. Spilsbury,
 11 individually and as trustee of The Brian E. Spilsbury Trust, Dee Ann Spilsbury, Kevin
 12 Spilsbury, individually and as trustee of The Kevin J. Spilsbury Trust, Anthonette Spilsbury,
 13 Premier Mechanical LLC, Joint Forces, LLC, and Crest Ridge, LLC. (Mot. to Strike 2:1–6,
 14 ECF No. 20). The Surety Defendants assert that “[e]ach of these individuals and/or entities is
 15 not the real-party-in-interest, as they do not own the properties at issue. Therefore, the Non-
 16 Owners lack standing to sue the Surety Defendants and they should be stricken from the
 17 Plaintiffs’ Amended Complaint.” (*Id.* 2:6–9). On the other hand, Plaintiffs assert that all
 18 Plaintiffs are necessary and indispensable parties pursuant to Rule 19 of the Federal Rules of
 19 Civil Procedure. (Response 6:16–21).

20 Article III of the United States Constitution limits the power of the judiciary to hear only
 21 “cases” and “controversies.” U.S. Const. art. III, § 2; *see also Lujan v. Defenders of Wildlife*,
 22 504 U.S. 555, 559–60 (1992). Standing is a core component of the Article III case or
 23 controversy requirement and focuses on whether the action was *initiated* by the proper plaintiff.
 24 *See Davis v. Fed. Election Comm’n*, 554 U.S. 724, 732–33 (2008) (quoting *Friends of Earth*,
 25 *Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (“[T]he party invoking

1 federal jurisdiction [must] have standing—the ‘personal interest that must exist at the
2 commencement of the litigation.’”); *see also Arakaki v. Lingle*, 477 F.3d 1048, 1059 (9th Cir.
3 2007) (“Standing ensures that, no matter the academic merits of the claim, the suit has been
4 brought by a proper party.”). The “irreducible constitutional minimum of standing” requires
5 that a plaintiff demonstrate three elements. *Lujan*, 504 U.S. at 560.

6 First, the plaintiff must have suffered an injury in fact—an invasion of a
7 legally protected interest which is (a) concrete and particularized and (b)
8 actual or imminent, not conjectural or hypothetical. Second, there must be
9 a causal connection between the injury and the conduct complained of—the
10 injury has to be fairly traceable to the challenged action of the defendant,
11 and not the result of the independent action of some third party not before
12 the court. Third, it must be likely, as opposed to merely speculative, that
13 the injury will be redressed by a favorable decision.

14 *Id.* at 560–61 (internal quotation marks and citations omitted).

15 First, “[s]lander of title involves false and malicious communication, disparaging to
16 one’s title in land, and causing special damage.” *Higgins v. Higgins*, 744 P.2d 530, 531 (Nev.
17 1987). Accordingly, the Court finds that only the title holders of the Anaheim and Bethwick
18 properties have standing to bring a claim for slander of title. Plaintiffs allege that the Anaheim
19 Property is owned by the Brian E. Spilsbury 2000 Trust and the Bethwick Property is owned by
20 the Kevin J. Spilsbury 2000 Trust. (Am. Compl. ¶ 16). Therefore, only the Brian E. Spilsbury
21 2000 Trust has standing to bring a claim for slander of title against the Anaheim Property, and
22 only the Kevin J. Spilsbury 2000 Trust has standing to bring a claim for slander of title against
23 the Bethwick Property.

24 Second, Plaintiffs seek declaratory relief of the respective rights and duties of Plaintiffs
25 and Defendants as they pertain to the deeds of trust for the Anaheim and Bethwick properties.
The parties to the Deed of Trust for the Anaheim Property include “R. Glen Woods, the
Successor Trustee of the Brian E. Spilsbury 2000 Trust” and ACIC. Plaintiffs allege that R.

1 Glen Woods and Brian Spilsbury are both trustees of the Brian E. Spilsbury 2000 Trust.
2 Accordingly, the Court finds that only R. Glen Woods and Brian Spilsbury, as parties to the
3 Deed of Trust for the Anaheim Property, may bring the declaratory relief claim for the Deed of
4 Trust for the Anaheim Property.

5 The parties to the Deed of Trust for the Bethwick Property include “R. Glen Woods, or
6 his Successors, as Trustee of the Kevin J. Spilsbury 2000 Trust” and ACIC. Plaintiffs allege
7 that R. Glen Woods and Kevin Spilsbury are both trustees of the Kevin J. Spilsbury 2000 Trust.
8 Accordingly, the Court finds that only R. Glen Woods and Kevin Spilsbury, as parties to the
9 Deed of Trust for the Bethwick Property, may bring the declaratory relief claim for the Deed of
10 Trust for the Bethwick Property.

11 Third, Plaintiffs assert a claim for relief for violation of NRS 107.077 as to both the
12 Anaheim and Bethwick properties. NRS 107.077 provides for liability “to any party to the
13 deed of trust.” Accordingly, the Court finds that only R. Glen Woods and Brian Spilsbury, as
14 parties to the Deed of Trust for the Anaheim Property, have standing to bring a claim for relief
15 for violation of NRS 107.077 for the Anaheim Property. Additionally, the Court finds that only
16 R. Glen Woods and Kevin Spilsbury, as parties to the Deed of Trust for the Bethwick Property,
17 have standing to bring a claim for relief for violation of NRS 107.077 for the Bethwick
18 Property.

19 Fourth, Plaintiffs assert a claim for relief for violation of NRS 107.080(2) as to the
20 Anaheim Property. NRS 107.080 provides for liability to “the grantor or the person who holds
21 title of record.” Accordingly, only the Brian E. Spilsbury 2000 Trust, as owner of the Anaheim
22 Property, has standing to bring a claim for violation of NRS 107.080(2) as to the Anaheim
23 Property.

24 Based on the foregoing, Dee Ann Spilsbury, Anthonette Spilsbury, Premier Mechanical
25 LLC, Joint Forces, LLC, and Crest Ridge, LLC, do not have standing to bring any of the claims

1 asserted in Plaintiffs' Amended Complaint and are dismissed from this action.

2 **IV. CONCLUSION**

3 **IT IS HEREBY ORDERED** that the Surety Defendants' Motion to Dismiss (ECF No.
4 19) is **GRANTED in part** and **DENIED in part**. The Court denies the Surety Defendant's
5 Motion to Dismiss on the grounds that Plaintiffs' claims violated the statute of limitations.
6 However, the Court grants the Surety Defendant's Motion to Dismiss as to Plaintiffs' claims for
7 relief for violation of NRS 107.077.

8 **IT IS FURTHER ORDERED** that Plaintiff shall file its second amended complaint by
9 **February 26, 2015**. Failure to file a second amended complaint by this date shall result in the
10 Court dismissing these claims with prejudice.

11 **IT IS FURTHER ORDERED** that the Surety Defendants' Motion to Strike Unrelated
12 Plaintiffs (ECF No. 20) is **GRANTED**. Accordingly, Dee Ann Spilsbury, Anthonette
13 Spilsbury, Premier Mechanical LLC, Joint Forces, LLC, and Crest Ridge, LLC are
14 **DISMISSED** from this action.

15 **DATED** this 4th day of February, 2015.

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19 _____
20 Gloria M. Navarro, Chief Judge
21 United States District Judge
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